Vasanthi a/p Perumal & Anor v Tan Sri Ghani Patail & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S6–21–224 OF 2005
MOHD YAZID JC
25 AUGUST 2008

Civil Procedure — Striking out — Granted by lower court — Appeal against order — Whether plaintiffs had cause of action against first defendant when alleged deaths did not take place at hands or on instruction of first defendant — Whether first defendant had failed, refused or neglected to prosecute any police officers involved in deaths of deceased — Whether action time barred — Whether qualifications to defence of limitation apply — Public Authorities Protection Act 1948 s 2(a) — Rules of the High Court 1980 O 18 r 19(1)(a), (b) & (d)

The plaintiffs' husbands ('the deceased') were shot dead on 24 August 2002 by the police during a police operation. The plaintiffs lodged police reports dated 21 September 2002 and 28 September 2002 complaining about the deaths of the deceased. In these reports the plaintiffs had written that the defendants had failed to reply in writing to the plaintiffs' query as to the violent manner in which the deceased had died. On 21 November 2002, the 11th defendant had written to the first plaintiff admitting the deceased's wrongful death and settling a sum of money as compensation. On 9 September 2005, the plaintiffs in their personal capacities instituted the present proceedings against the first defendant, the attorney general of Malaysia, and the second to 11th defendants claiming for, inter alia, declarations that the defendants were in breach of art 5 of the Federal Constitution ('Constitution') and s 15(3) of the Criminal Procedure Code ('the CPC'); that the defendants had refused, failed, neglected or omitted to abide by ss 20, 21 and 24 of the Police Act 1967; that the first defendant be compelled under s 339 of the CPC to carry out an inquest into the deaths of the deceased; and damages. It was the plaintiffs' contention that the deceased were summarily executed by the police without being given a fair trial to determine whether they were actually involved in an organised car theft syndicate. The plaintiffs further pleaded that the 11th defendant's letter dated 21 November 2002 had only given part of the damages demanded by the plaintiffs. The defendants applied to strike out the plaintiffs' action under O 18 r 19 of the Rules of the High Court 1980. The defendants' application was allowed and the plaintiffs' action struck off. This was the plaintiffs' appeal against that order. The defendants submitted that the plaintiffs had no cause of action against the first defendant because the alleged deaths of the deceased

did not take place at the hands or on the instruction of the first defendant. In addition they submitted that art 5 of the Constitution and s 15 of the CPC did not apply to the first defendant. Furthermore, the first defendant had the discretion whether or not to prosecute any person or persons in connection with the shooting of the deceased and a court order declaring the attorney general bound to prosecute the shooting of the deceased was in contravention of s 339 of the CPC. The defendants in reliance on ss 7 and 8 of the Civil Law Act 1956 submitted that the plaintiffs did not have the locus standi to institute the present proceedings in their personal capacity and that their only remedy was to apply for judicial review into the shooting of the deceased. As the cause of action instituted by the plaintiffs started on the date of the death of the deceased, 24 August 2002, the three year limitation expired on 24 August 2005. Therefore the defendants submitted that the plaintiffs' action against the second to the tenth defendants, instituted on 9 September 2005, was time barred under s 2(a) of the Public Authorities Protection Act 1948 ('the Act'). The plaintiffs' argument in this regard was that there had been a fresh accrual of the cause of action against the defendants by virtue of the 11th defendant's letter dated 21 November 2002 admitting the wrongful deaths of the deceased.

Held, dismissing the appeal with costs:

(1) The plaintiffs' statement of claim against the first defendant was obviously unsustainable because the police operation in which the deceased were allegedly chased and ambushed by the police and subsequently shot dead was in no way connected to the first defendant or carried out on the instruction and direction of the first defendant (see paras 16–17).

(2) The law is apparent that the attorney general has the power to prosecute against any persons for any crime committed. This discretion is unfettered and cannot be questioned by any court of law. Thus it was not open for the plaintiffs to claim that the first defendant had failed, refused or neglected to prosecute any of the police officers involved in the death of the deceased. It is clear from decided authorities that the sole and unfettered discretion given to the attorney general to prosecute criminal offences is to maintain the independence of the power to prosecute. To allow judicial interference in the power of the attorney general in prosecuting criminal offences would result in public mistrust and therefore to be avoided (see paras 19–20, 23–25).

(3) It was not possible to compel the first defendant to carry out an inquest into the deaths of the deceased because under s 339 of the CPC, the inquiries are held not at the instance of the attorney general but a magistrate (see paras 29–30).

(4) The Federal Court and the Court of Appeal have been consistent in giving strict adherence to s 2(a) of the Public Authorities Protection Act 1948 which is part of a specific legislation to govern causes of action affecting public officials and public authorities. The intention of this section is to limit and minimise claims against public authorities and to ensure the genuineness of such claims. As such the plaintiffs' action is time barred for being out of the three year limitation period under s 2(a) of the Act and the 11th defendant's letter dated 21 November 2002 admitting the deceased's wrongful deaths did not cause the cause of action to start afresh. In addition the qualifications to the defence of limitation did not apply in the present case (see paras 36, 39–41, 46).

[Bahasa Malaysia summary

Suami plaintif-plaintif ('si mati') telah ditembak mati pada 24 Ogos 2002 oleh polis semasa operasi polis. Plaintif-plaintif telah membuat laporan polis bertarikh 21 September 2002 dan 28 September 2002 mengadu berkenaan dengan kematian si mati. Dalam laporan-laporan ini, plaintif-plaintif telah menulis bahawa defendan gagal untuk membalas secara bertulis kepada persoalan plaintif berkenaan dengan tindakan ganas di mana si mati telah mati. Pada 21 November 2002, defendan kesebelas telah menulis kepada plaintif pertama mengaku kematian salah si mati dan memberikan sejumlah wang sebagai pampasan. Pada 9 September 2005, plaintif-plaintif di dalam kapasiti peribadi mereka memulakan prosiding ini terhadap defendan pertama, peguam negara Malaysia dan defendan kedua hingga kesebelas menuntut, antara lain, deklarasi bahawa defendan telah memungkiri perkara 5 Perlembagaan Persekutuan ('Perlembagaan') dan s 15(3) Kanun Prosedur Jenayah ('KPJ') bahawa defendan telah enggan, cuai atau lalai untuk mematuhi ss 20, 21 dan 24 Akta Polis 1967; bahawa defendan pertama terpaksa di bawah s 339 KPJ melaksanakan inkues kematian si mati; dan ganti rugi. Adalah penegasan plaintif-plaintif bahawa si mati telah dihukum secara terus oleh polis tanpa diberikan perbicaraan yang sewajarnya sama ada mereka sebenarnya terlibat di dalam sindikit curi kereta terancang. Plaintif selanjutnya memplidkan bahawa surat defendan kesebelas yang bertarikh 21 November hanya memberikan sebahagian ganti rugi yang diminta oleh plaintif-plaintif. Defendan-defendan memohon untuk membatalkan tindakan plaintif-plaintif di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980. Permohonan defendan-defendan telah dibenarkan dan tindakan plaintif-plaintif telah dibatalkan. Ini adalah rayuan plaintif-plaintif terhadap perintah tersebut. Defendan menghujahkan bahawa plaintif-plaintif tidak mempunyai kausa tindakan terhadap defendan pertama kerana kematian si mati yang didakwa tidak berlaku oleh atau atas arahan defendan pertama. Selanjutnya mereka berhujah perkara 5 Perlembagaan dan s 15 KPJ tidak terpakai kepada defendan pertama. Selanjutnya, defendan pertama

mempunyai budi bicara sama ada untuk mendakwa atau tidak mana-mana individu atau individu-individu yang berkaitan dengan penembakan terhadap si mati dan perintah mahkamah yang mengisytiharkan peguam negara terikat untuk mendakwa penembakan terhadap si mati adalah bertentangan dengan s 339 KPJ. Defendan-defendan dengan bergantung ke atas ss 7 dan 8 Akta Undang-Undang Sivil 1956 berhujah bahawa plaintif-plaintif tidak mempunyai locus standi untuk memulakan prosiding ini di dalam kapasiti mereka sendiri dan remedi mereka hanya terpakai untuk semakan kehakiman dalam penembakan terhadap si mati. Berkenaan dengan kausa tindakan yang dimulakan oleh plaintif-plaintif bermula pada tarikh kematian si mati, 24 Ogos 2002, had masa tiga tahun telah luput pada 24 Ogos 2005. Oleh itu, defendan menghujahkan bahawa tindakan plaintif-plaintif terhadap defendan kedua dan kesepuluh, yang dimulakan pada 9 September 2005 adalah terhalang oleh masa di bawah s 2(a) Akta Perlindungan Penjawat Awam 1948 ('Akta'). Pernyataan plaintif-plaintif berkenaan dengan ini adalah terdapat keakruan kausa tindakan yang baru terhadap defendan-defendan berdasarkan surat defendan kesebelas bertarikh 21 November 2002 yang mengaku kematian salah si mati.

Diputuskan, menolak rayuan dengan kos:

(1) Pernyataan tuntutan plaintif-plaintif terhadap defendan pertama adalah jelas tidak boleh bertahan kerana operasi polis yang mana si mati dikatakan dikejar dan diserang hendap oleh polis dan seterusnya ditembak mati adalah langsung tidak berkaitan dengan defendan pertama atau dilakukan atas arahan defendan pertama (lihat perenggan 16–17).

(2) Undang-undang adalah jelas bahawa peguam negara mempunyai kuasa untuk membuat pendakwaan terhadap mana-mana individu bagi mana-mana jenayah yang dilakukan. Budi bicara ini adalah tidak terhalang dan tidak boleh dipersoalkan oleh mana-mana mahkamah perundangan. Oleh itu, ianya tidak terbuka bagi plaintif-plaintif untuk menuntut bahawa defendan pertama telah gagal, enggan atau abai untuk mendakwa mana-mana pegawai polis yang terlibat di dalam kematian si mati. Adalah jelas daripada autoriti yang telah diputuskan bahawa budi bicara satu-satunya dan tidak dibelenggu yang diberikan kepada peguam negara untuk mendakwa kesalahan jenayah adalah untuk mengekalkan kebebasan kuasa untuk mendakwa. Untuk membenarkan campur tangan kehakiman di dalam kuasa peguam negara di dalam pendakwaan kesalahan jenayah akan mengakibatkan ketidak percayaan dan oleh itu mestilah dihindari (lihat perenggan 19–20, 23–25).

(3) Adalah tidak mustahil untuk memaksa defendan pertama untuk melaksanakan inkues terhadap kematian si mati di bawah s 339 KPJ, siasatan dilakukan bukannya atas permintaan peguam negara tetapi atas permintaan majistret (lihat perenggan 29–30).

(4) Mahkamah Persekutuan dan Mahkamah Rayuan begitu konsisten dalam memberikan pendirian yang tegas kepada s 2(a) Akta yang mana adalah sebahagian perundangan spesifik untuk mentadbir kausa tindakan yang menjejaskan pegawai awam dan pihak berkuasa awam. Tujuan seksyen ini adalah untuk menghadkan dan meminimumkan tuntutan terhadap pihak berkuasa awam dan memastikan ketulenan tuntutan tersebut. Oleh kerana tindakan plaintif-plaintif adalah terhalang oleh had masa dengan melepasi tiga tahun tempoh had masa di bawah s 2(a) Akta dan surat defendan kesebelas yang bertarikh 21 November 2002 yang mengaku kematian salah si mati tidak menyebabkan kausa tindakan bermula semula. Sebagai tambahan, kelayakan pembelaan had masa tidak terpakai di dalam kes ini (lihat perenggan 36, 39–41, & 46).]

Notes

For cases on striking out in general, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 6653–6808.

Cases referred to

Alias bin Ismail v Hairuddin bin Mohamad & Anor [1997] 3 MLJ 724, CA (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd [1993] 3 MLJ 36, SC (refd)

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12, SC (refd)

Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamed bin Yaacob & Ors [1983] 2 MLJ 227, FC (refd)

Johnson Tan Han Seng v PP [1977] 2 MLJ 66, FC (refd)

Long bin Samat & Ors v PP [1974] 2 MLJ 152, FC (folld)

Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor [2001] 6 MLJ 75, HC (refd)

Legislation referred to

Civil Law Act 1956 ss 7, 8
Criminal Procedure Code ss 15, 15(3), 339
Federal Constitution arts 5, 145, 145(3)
Limitation Act 1953 s 26, 26(1), 26(2)
Police Act 1967 ss 20, 21, 24
Public Authorities Protection Act 1948 s 2(a)
Rules of the High Court 1980 O 18 r 19(1)(a), O 18 r 19(1)(b), O 18 r 19(1)(d), O 53

(Kumar Hashimah & Co) for the plaintiffs.
(Deputy Public Prosecutor, Attorney General's Chambers) for the defendants.

Mohd Yazid JC:

I had, on 17 April 2008 dismissed the plaintiffs' appeal (encl 8) from the decision of the senior assistant registrar in allowing the defendants' application in encl 6 to strike out the writ and the statement of claim and the paragraphs in the statement of claim that contain evidence, submissions and are against the law. Before proceeding with my reasons for dismissing the plaintiffs' appeal, I would summarise the plaintiffs' claim and action as pleaded in the statement of claim.

STATEMENT OF CLAIM

[1] The plaintiffs are claiming for:

(a) declarations:

(i) that the defendants are in breach of art 5 of the Federal Constitution and s 15(3) of the Criminal Procedure Code;

(ii) that the defendants refused, failed, neglected or omitted to abide by ss 20, 21 and 24 of the Police Act 1967;

(iii) that the first defendant is compelled under s 339 of the Criminal Procedure Code to carry out an inquest for the death of the plaintiffs' husbands (the deceased);

(b) special damages for RM2,038,080;

(c) general damages for pain and suffering, loss of consortium for RM800,000;

(d) interest at the rate of 8% per annum on these damages;

(e) exemplary and aggravated damages for RM200,000;

(f) interest at the rate of 8% per annum on the exemplary and aggravated damages;

(g) interest at the rate of 8% per annum on the judgment sum from the date of judgment until full payment; and

(h) cost.

[2] The plaintiffs pleaded that the deceased were shot dead by the police during a police operation known as 'Operation Copperhead' or 'Operation Topaz' sometime in 2002.

A **[3]** The purpose of the said operation was, as contended by the plaintiffs, to capture suspects from the Indian race.

[4] The plaintiffs contended that the said operation was carried out based on a shoot to kill policy and that their husbands ('the deceased') were
B summarily executed on 24 August 2002 at 12 midnight without being given a fair trial to determine whether the deceased were actually involved in an organised car theft syndicate.

[5] Subsequently, the plaintiffs had lodged police reports Mantin
C No 1211/02 dated 21 September 2002 and Mantin No 1243/02 dated 28 September 2002 complaining about the deaths of the deceased. The plaintiffs had written in the said reports that the defendants had failed to reply in writing to the plaintiffs' query as to the violent manner in which the deceased had died.
D

[6] The plaintiffs contended that to date, there has not been any investigation or prosecution into the allegation of wrongful deaths of the deceased stated in the said police reports.

E

[7] The plaintiffs pleaded that the 11th defendant had written on 21 November 2002, inter alia, admitting the first plaintiff's allegation regarding the wrongful death of her husband and that the fourth defendant wrote a letter dated 19 September 2002 admitting that the deceased were shot
F dead during a police chase of them.

[8] The plaintiffs pleaded that the 11th defendant's letter dated 21 November 2002 had only given part of the damages demanded by the plaintiffs.

G

THE DEFENDANTS' STRIKING OUT APPLICATION (ENCL 6)

[9] After service of the writ and the statement of claim, the defendants had entered appearance and filed encl 6 to strike out the plaintiffs' action under
H O 18 r 19(1)(a) or (b) or (d) of the RHC 1980 and the paragraphs in the statement of claim that amounted to evidence, submission and against the law under O 18 r 19(1)(a) or (d).

[10] At first instance before the senior assistant registrar, the defendants'
I application in encl 6 was allowed and the plaintiffs' action and the impugned paragraphs were struck off.

[11] The plaintiffs then filed a notice of appeal to the judge in chambers dated 1 September 2006 (encl 8) which is the subject of this appeal before me.

THE PLAINTIFFS' APPEAL TO THE JUDGE IN CHAMBERS (ENCL 8)

[12] After a thorough reading of the statement of claim, the affidavits relating to the striking out application, the written submissions and authorities of the plaintiffs and the defendants, I dismissed the plaintiffs' appeal via encl 8 and upheld the decision of the senior assistant registrar in allowing the defendants' application in encl 6 to have the writ and statement of claim and the paragraphs in the statement of claim that contain evidence and submissions struck off.

[13] I am in agreement with the defendants' arguments in support of the striking out application but before laying down my reasons for this finding, I would briefly state the defendants' points of submission.

[14] The defendants submitted the following legal arguments to support their striking out application:

(i) That there is no cause of action against the first defendant, the attorney general of Malaysia. The reason is that the alleged shooting of the deceased took place not at the hands or on the instruction of the first defendant. Article 5 of the Federal Constitution and s 15 of the Criminal Procedure Code does not apply to the first defendant. Furthermore, the first defendant has the discretion whether or not to prosecute any person or persons in connection with the shooting of the deceased. A court order declaring that the attorney general is bound to prosecute the case regarding the shooting of the deceased is in contravention of the clear words of s 339 of the Criminal Procedure Code;

(ii) That the plaintiffs, in bringing the present action in their personal capacity are abusing the court process. Under ss 7 and 8 of the Civil Law Act 1956, the plaintiffs do not have locus to institute the present proceedings in their personal capacity. The only remedy available is for the plaintiffs to resort to public law ie by applying for judicial review into the shooting of the deceased under O 53 of the RHC 1980;

(iii) That the plaintiffs' action against the second to the tenth defendants are time barred under s 2(a) of the Public Authorities Protection Act 1948 and that the plaintiffs do not fulfill the two conditions under s 26 of the Limitation Act 1953 to qualify themselves from being subjected to the

A defence of limitation. These two conditions are an actin to recover land or to enforce a mortgage or charge in respect of land or personal property and an action to recover any debt or other liquidated pecuniary claim or any claim to the personal estate of a deceased person or to any share or interest to any such estate.

B

[15] A thorough reading of the statement of claim would show that the plaintiffs have failed to plead any cause of action against the first defendant, the attorney general of Malaysia.

C

[16] The said police operation in which the deceased were allegedly chased and ambushed by the police and subsequently shot dead are in no way connected to the first defendant or carried out on the instruction and direction of the first defendant.

D

[17] Therefore, I do not see how the plaintiffs' statement of claim as against the first defendant could be obviously sustainable in accordance with the principles of pleadings as enumerated by the Supreme Court in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 E MLJ 36 at p 43 that:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule F (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd*), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see *AG of Duchy of Lancaster v L & NW Rly Co*). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors*). The court must be satisfied G that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[18] I also do not see how the plaintiffs' claim against the first defendant H could be taken as a 'cause of action' as propounded by the Supreme Court in *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 where Salleh Abas LP held that:

> What then is the meaning of 'a cause of action'? 'A cause of action' is a statement of facts alleging that a plaintiff's right, either at law or by statute, has, in some way I or another, been adversely affected or prejudiced by the act of a defendant in an action. Lord Diplock in *Letang v Cooper* [1965] 1 QB 232 at p 242 defined 'a cause of action' to mean 'a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person'. In my view the factual situation spoken of by Lord Diplock must consist of a statement alleging that, first,

the respondent/plaintiff has a right either at law or by statute and that, secondly, such right has been affected or prejudicated by the appellant/defendant's act. A

[19] I am not in agreement with the plaintiffs' claim that the first defendant has failed, refused or neglected to prosecute any of the police officers involved in the death of the deceased. B

[20] I find that the law is apparent that the power to prosecute against any persons for any crime being committed is upon the sole discretion of the attorney general. This discretion is unfettered and cannot be questioned by any court of law. C

[21] In support of this finding I am guided by the Federal Court in *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152 at p 158 where art 145(3) of the Federal Constitution was discussed that: D

> In our view this clause form the supreme law clearly gives the attorney general very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence. He may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue … Anyone who is dissatisfied with the attorney general's decision not to prosecute, or to go with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not in the courts. E F

[22] As to the meaning of this discretion accorded to the attorney general, reference is made to another decision of the Federal Court in *Johnson Tan Han Seng v Public Prosecutor* [1977] 2 MLJ 66 at pp 70–71 that: G

> They deliberately wrote art 145(3) into our constitution, which reads: 'The attorney general shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a native court or a court-martial.' *The language of this provision is very wide, for it includes the word 'discretion' which means liberty of deciding as one thinks fit.* In view of this deliberate decision of our constitution — makers to write this provision into our constitution I do not think that it can be said that it must be read subject to art 8. Rather, in my view, the contrary: art 8 it is that must be read subject to art 145(3). In deciding that the attorney general is not constrained by art 8 when deciding whether or not to prosecute and if so on what charge, whether a lesser or a greater one, it must not be thought that he may act dishonestly. The public of whose interest he is the guardian has a right to expect him to act honestly, without fear of powerful national and local figures or of the consequences to him personally or politically, and without favouring his relatives and friends and supporters, his principal concern being to maintain the rule of law so that there will be no anarchy H I

A and to maintain standards in public life and the private sector; and if he did not do his duty honestly and properly the public would be able to show their disapproval not however in the courts but elsewhere …

B **[23]** It is clear from the above authorities that the rationale in according to the attorney general the sole and unfettered discretion to prosecute criminal offences is to maintain the independence of the power to prosecute.

C **[24]** If the courts were allowed to interfere or question the attorney general's power to prosecute, it would cause mischief to the role of the attorney general as the public prosecutor.

D **[25]** To allow judicial interference in the power of the attorney general in prosecuting criminal offences would result in the public's mistrust as to the honesty and integrity of the attorney general in the conduct of criminal cases.

E **[26]** This consequence is to be avoided. The courts should be mindful and respectful of our founding father's foresight in preserving the power to prosecute criminal offences in the office of the attorney general and no other body or person.

F **[27]** Should this court grant the plaintiffs' prayer in seeking the first and second declaratory orders, this court would not only be deciding against the decisions of the apex court in this country but also against the underlying rationale of art 145 of the Federal Constitution.

G **[28]** This is not to say that the public do not have recourse at all against any grievance against public officials or public authority. There is. Just not by seeking declaratory court orders against the attorney general.

H **[29]** The third declaratory order that the plaintiffs are seeking is specifically related to the first defendant ie to compel the first defendant to hold an inquiry into the deaths of the deceased. The answer to this is simple. Inquiries are held not at the instance of the attorney general but a magistrate. Section 339 of the Criminal Procedure Code is clear on this as could be seen from the words of the said section that:

I The public prosecutor may at any time direct a magistrate to hold an inquiry under this chapter into the cause of, and the circumstances connected with, any death such as is referred to in sections 329 and 334, and the magistrate to whom such direction is given shall then proceed to hold an inquiry and shall record his finding as to the cause of death and as to any of the circumstances connected with it with regard to which the public prosecutor may have directed him to make inquiry.

[30] In light of the above legal propositions which are clearly against the plaintiffs' claim and contentions, I find that the plaintiffs do not have a reasonable cause of action against the first defendant. A

[31] Even if I were to be found erroneous in this finding, I would still maintain my decision in dismissing encl 8 and upholding the decision to strike out the plaintiffs' action for the reason that the plaintiffs' claim is barred for limitation. B

[32] The limitation point is also the sole reason I am dismissing the plaintiffs' appeal against the decision in striking out their claim against the second to the 11th defendants. C

[33] The plaintiffs' argument is that there has been a fresh accrual of the cause of action against the defendants by virtue of the 11th defendant's acknowledgment letter dated 21 November 2002 wherein the allegations of the plaintiffs about the deceased's wrongful death was admitted and a sum of money was given to the plaintiffs as compensation thereof. D

[34] The cause of action starts on the date of the deceased's death ie on 24 August 2002. The three year limitation expired on 24 August 2005. The present proceedings were instituted on 9 September 2005. E

[35] Section 2(a) of the Public Authorities Protection Act 1948 states that: F

> the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty six months next after the ceasing thereof. G

[36] The Federal Court and the Court of Appeal have been consistent in giving strict adherence to the words of this section which is part of a specific legislation to govern causes of action affecting public officials and public authority. H

[37] The first case is *Alias bin Ismail v Hairuddin bin Mohamad & Anor* [1997] 3 MLJ 724 at p 728 where the Court of Appeal held that 'The court has no discretion to set aside a defence of limitation'. I

[38] Secondly, is the case of *Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamed bin Yaacob & Ors* [1983] 2 MLJ 227 at p 231 where the Federal Court held that:

A We need not go further than to refer to the judgment of this court in *Tio Chee Hing & Ors v Government of Sabah* [1981] 1 MLJ 207 where this court referred to the Court of Appeal decision in *Riches v Director of Public Prosecutions* [1973] 2 All ER 935, at p 939 which decided that where it is clear that the defendant was going to rely on the statute of limitations and there was nothing before the court to
B suggest that the plaintiffs could escape from it, the claim would be struck out. An extract from the judgment of Davis LJ at p 939 is relevant: 'In the light of those more recent authorities I think, as I say, that perhaps the observations of this court in *Dinsmore v Milton* went too far. I do not want to state definitely that, in a case where it is merely alleged that the statement of claim discloses no cause of action, the limitation objection should or would prevail. In principle, I cannot see why
C not. If there is any room for an escape from the statute, well and good; if it can be shown. *But in the absence of that, it is difficult to see why a defendant should be called on to pay large sums of money and a plaintiff be permitted to waste large sums of his own or somebody else's money in an attempt to pursue a cause of action which has already been bared by the statute of limitations and must fail.*

D

[39] It is apparent that the Legislature's intention is to limit and minimise claims against public authorities and to ensure the genuineness of said claims by enacting s 2(a) of the Public Authorities Protection Act 1948.

E

[40] As such, I find that the plaintiffs' action is time barred for being out of the three year limitation period under s 2(a) of the Public Authorities Protection Act 1948.

[41] I am not in agreement with the plaintiffs regarding their argument
F that the 11th defendant's letter dated 21 November 2002 amounts to an admission of the claim and therefore causes the cause of action to start afresh.

[42] Section 26 of the Limitation Act 1953 specifies two situations in
G which the plaintiffs could qualify their claim, and both situations do not fit into the present proceedings.

[43] The first is an action to recover land or to enforce a mortgage or charge in respect of land or personal property as stated in s 26(1) of the
H Limitation Act 1953.

[44] The second is an action to recover any debt or other liquidated pecuniary claim or any claim to the personal estate of a deceased person or to any share or interest to any such estate as stated in s 26(2) of the Limitation
I Act 1953.

[45] These two qualifications were upheld in *Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor* [2001] 6 MLJ 75 at pp 118–119.

[46] The qualifications to the defence of limitation are relating to admissions of debt rather than acknowledgment of a claim as contended by the plaintiffs in the present case.

[47] In light of the above reasons, I find that it is not incumbent upon this court to make a finding regarding the second point raised by the defendants ie the locus of the plaintiffs.

[48] The plaintiffs' appeal via encl 8 is therefore dismissed with costs.

Appeal dismissed with costs.

Reported by K Nesan